

**UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT (MOAB FIELD OFFICE)**

**COMMERCIAL RIVER SPECIAL RECREATION PERMIT STIPULATIONS**

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**Special Recreation Permit Details**

Name of Company: XXXXXXXXXX

Special Recreation Permit Number: XXXXXXX

SRP Valid from: Date of Issuance, 2007 to: 12/31/2016

Activities authorized by this SRP: Commercial Downstream River Trips

Areas of authorization: Colorado River: Loma to Westwater Ranger Station (unallocated);

Westwater Ranger Station to Cisco (XXX passenger days); Cisco to Castle Creek (unallocated).

Pre-trip Itineraries Required? Only if specifically requested at some point by BLM Moab Field Office for Loma to Westwater Ranger Station and Cisco to Castle Creek segments. The Westwater commercial launch calendar is used in lieu of pre-trip itineraries for Westwater Canyon trips.

Post Use Report Due: November 15<sup>th</sup> of each calendar year

Insurance Minimums: Liability: \$500K/occurrence; \$1M aggregate. Property damage: \$30K

Fee structure: The greater of \$95 or 3% of gross revenue plus \$7 per passenger Special Area fee for Westwater Canyon usage

Deductions or discounts applicable: None

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**BLM National Terms and Stipulations**

a. The permittee shall comply with all Federal, State, and local laws, ordinances, regulations, orders, postings, or written requirements applicable to the area or operations covered by the Special Recreation Permit. The permittee shall ensure that all persons operating under the authorization have obtained all required Federal, State, and local licenses or registrations. The permittee shall make every reasonable effort to ensure compliance with these requirements by all agents of the permittee and by all clients, customers, participants, or spectators under the permittee's supervision. The employees of the permittee must be knowledgeable of the stipulations and regulations which apply to this permit.

b. A Special Recreation Permit authorizes special uses of the public lands and related waters as specified in the permit. Should circumstances warrant, the permit may be modified by the BLM at any time, including modification of the amount of use. The authorized officer may suspend or terminate a SRP if necessary to protect public resources, health, safety, the environment, or because of noncompliance with permit stipulations. Failure to comply may result in criminal, civil, and/or administrative actions (probation, suspension, cancellation). The procedures to be followed for such actions are outlined in BLM's Recreation Permit Administration Handbook (H-2930-1). Administrative actions by the BLM to suspend or terminate a SRP may be appealed.

c. No value shall be assigned to or claimed for the permit, or for the occupancy or use of Federal lands or related waters granted thereupon. The permit privileges are not to be considered property on which the permittee shall be entitled to earn or receive any return, income, price, or compensation. The use of a permit as collateral is not recognized by the BLM.

d. Unless expressly stated, the SRP does not create an exclusive right of use of an area by the permittee. The permittee shall not interfere with other valid uses of the Federal land by other users. The United States reserves the right to use any part of the area for any purpose.

e. The permittee or permittee's representative may not assign, contract, or sublease any portion of the permit authorization or interest therein, directly or indirectly, voluntarily or involuntarily. However, the authorized officer may approve contracting of equipment or services in advance, if necessary to supplement a permittee's operations. Such contracting should not constitute more than half the required equipment or services for any one trip and the permittee must retain operational control of the permitted activity. If equipment or services are contracted, the permittee shall continue to be responsible for compliance with all stipulations and conditions of the permit. An advertiser or booking agent for the purpose of this section is defined as an individual or organization that advertises or books trips for the permittee but does not hold a permit to run commercial trips in the pertinent area. Upon submission of a request from the permittee in advance, the BLM may authorize trips that do not strictly meet the requirements.

The following prohibited activities are considered indication of a violation of this stipulation:

a) a third party advertisement used to book a trip does not clearly indicate that the trip will be operated by the company holding the permit,

(b) the booking agent or advertiser provides both passenger transportation to the launch point and equipment used on the river,

(c) the booking agent or advertiser provides more than half of the rafts, dories, kayaks, or pontoon boats used on the river,

(d) more than two (2) representatives or employees of the booking agent or advertiser (employed during the same calendar year) act as guides or crew on the river during a trip. Such representatives or employees must constitute less than 50 percent of the crew,

(e) a trip is represented to the participants as being conducted by other than the permittee,

(f) equipment (to be used on the river), vehicle or guide clothing at the launch site carries the name, markings, or logo of the booking agent or advertiser involved with the trip (this does not apply to booking agents who are permitted outfitters on the river segment),

(g) the passengers and crew are not covered by the liability and workers compensation insurance carried by the permittee.

f. All advertising and representations made to the public and the authorized officer must be accurate. Although the addresses and telephone numbers of the BLM may be included in advertising materials, official agency symbols may not be used. The permittee shall not use advertising that attempts to portray or represent the activities as being conducted by the BLM. The permittee may not portray or represent the permit fee as a special Federal users' tax. Advertised and actual rates will represent the total cost of trips including permit fees. Special area fees may be shown as a separate fee on customer billings. The permittee must furnish the authorized officer with any current brochure and price list if requested by the authorized officer.

g. The permittee must assume responsibility for inspecting the permitted area for any existing or new hazardous conditions, e.g., trail and route conditions, abandoned mines, land slides, avalanches, rocks, changing water or weather conditions, falling limbs or trees, submerged objects, hazardous wildlife, or other hazards that present risks for which the permittee assumes responsibility.

h. In the event of default on any mortgage or other indebtedness, such as bankruptcy, creditors shall not succeed to the operating rights or privileges of the permittee's SRP.

i. The permittee cannot, unless specifically authorized, erect, construct, or place any building, structure, or other fixture on public lands. Upon leaving, the lands must be restored as nearly to pre-existing conditions as possible.

j. The permittee, or a representative thereof, must present or display a copy of the Special Recreation Permit to an authorized officer's representative, or law enforcement personnel upon request. If required, the permittee, or a representative thereof, must display a copy of the permit or other identification tag on equipment used during the period of authorized use.

k. The authorized officer, or other duly authorized representative of the BLM, may examine any of the records or other documents related to the permit, the permittee or the permittee's operator, employee, or agent for up to 3 years after expiration of the permit.

## **BLM Utah Terms and Stipulations**

### **A. General**

(1) This permit does not constitute a commitment by the BLM to continue authorization of the permitted use beyond the permit period which, unless expressly stated otherwise, is ten (10) calendar years. Upon expiration of the permit, the permittee will be the preferred applicant for a new permit provided the permittee has complied with the requirements of the permit, continued use of the permit is consistent with the resource management plan and/or recreation area management plan, there are no overriding use authorizations, and no superior claim to the land has been asserted. In order to retain renewal preference, the permittee must file his/her application for a new permit at least sixty (60) days prior to expiration of the present permit. BLM reserves the right to accept or reject the application and change the terms of the new permit. Validation of the permit will be subject to regulations in force and the requirements in stipulation A(2).

(2) Permits issued for more than one year are subject to annual validation. To secure validation the permit holder must:

(a) have performed satisfactorily under the terms and conditions of this permit and be in conformance with applicable Federal, State, and local laws, ordinances, regulations, orders, postings, and written requirements applicable to the area and operation covered by the permit,

(b) ensure that all persons operating under the permit have obtained all required Federal, State, and local licenses or registrations.

(c) have on file, with the office issuing the permit, current insurance identifying the U.S. Government as additional insured as specified in stipulation C, and

(d) have no outstanding, past due, or unpaid billing notices.

(3) After each season, the permittee shall be given a final evaluation for the season. The evaluation will be completed by the office issuing the permit. Performance evaluations may also be conducted at the end of the permit term, when there are changes in operating plans or procedures, when violations of the permit occur, prior to the issuance of a new use authorization to an existing permittee, or prior to permit renewal.

(4) Permittees may not leave unattended personal property on public lands administered by the Bureau of Land Management for a period of more than 48 hours without written permission of the authorized officer, with the exception that vehicles may be parked in designated parking areas for up to 14 consecutive days. Unattended personal property is subject to disposition under the Federal Property and Administrative Services Act of 1949 as amended.

(5) The permit only authorizes the use for the activity, the time(s) and in the area(s) specifically described in the Special Recreation Permit details on page one.

(6) If requested, the permittee will provide the BLM a current and correct list of employees who are authorized to conduct services for the company on public land. Persons providing services under this permit must be an employee of the permittee.

(7) Placement of caches of supplies and food or equipment for future trips is not allowed unless specifically authorized.

(8) While conducting a trip, the permittee must allow BLM representatives to confirm the presence of all required equipment and to orient trip participants about the use of public lands and safety.

## B. Financial

(1) Commercial use fees are based on a percentage (currently 3%) of the adjusted gross revenue derived from use authorized under the Special Recreation Permit. The minimum, non-refundable use fee is \$95 (as of April, 2008). BLM will continue to split the 3% commercial use fee for the pre-season and post-season billings.

(2) Permittees who fail to pay post-season use fees within 60 days of the due date will be required to make full payment in advance before additional use will be authorized for the following season. The requirement to pay for all intended use in advance will be maintained for a period of two years. The requirement to make full payment in advance shall not represent a probationary action.

(3) In no case may use occur with an outstanding bill due from the previous season or before the pre-season bill has been paid (including any applicable interest and handling charges).

(4) The permittee must submit a post use report (see Appendix A) by November 15<sup>th</sup> of each year. Alternative reporting arrangements may be established by written agreement with the authorized officer. An extension of this due date may be approved by the issuing office on a

case-by-case basis. The report shall describe all trips taken under the permit since the previous report and contain a trip-by-trip log of: trip location, beginning and ending dates of each trip, number of passengers, number of passenger days, number of crew, and gross receipts for the trip. In reporting gross receipts, the outfitter will report all payments made by the customer, including trip-related equipment rental, with the only exception being retail sales of durable goods that remain the property of the customer and have an expected service life extending beyond the guided activity. Sales tax associated with gross receipts is exempt from reporting requirements. The request for deductions based on pre- and post- trip transportation and lodging expenses and percentage of time on public land, if being claimed, must also be submitted at this time. Requests for transportation and lodging deductions must be accompanied by copies of supporting receipts documenting proof of payment.

(5) The permittee must submit a Post Use Report to the authorized officer for every year the permit is in effect. If the post use report is not received by the established deadline (see Special Recreation Permit Details on page one) the following late fee schedule will be initiated:

- More than 15 days but less than 30 days after the due date: \$125
- More than 30 days after the due date, but less than 45 days: \$250

Post use reports submitted more than 45 days after the due date may result in criminal, civil, and/or administrative action to protect the interest of the United States.

(6) The permittee must maintain the following internal accounting records pertaining to the permit:

(a) W-2 records or a similar record of employment for all employees conducting trips under the permit,

(b) a record of all financial relationships with booking agents or advertisers,

(c) a record of all receipts or compensation including payments, gratuities, donations, gifts, bartering, etc., received from any source on trips conducted under the permit, and

(d) a record of all payments made by the permittee and claimed as a deduction in the permittee's fee submission.

The BLM retains the right to verify permit compliance from the books, correspondence, memoranda, and other records of the permittee, and from the records pertaining thereto of a proprietary or affiliated company during the period of the permit and for three (3) years thereafter regardless of physical location.

## C. Insurance

(1) At a minimum, the permittee shall have in force public liability insurance in the appropriate amount as indicated in Special Recreation Permit Details on page one.

(2) The policy shall state that the insurance company shall have no right of subornation against the United States of America.

(3) Such insurance must name the United States Government as additional insured and provide for specific coverage of the permittee's contractually assumed obligation to indemnify the United States.

(4) The policy shall stipulate that the authorized officer of the Bureau of Land Management shall be notified 30 days in advance of the termination or modification of the policy.

- (5) The permit is not valid unless the permittee maintains a current authenticated certificate of the required insurance on file with the office issuing the permit.
- (6) The permittee shall indemnify and hold harmless the United States against any responsibility or liability for damage, death, injury, or loss to persons and property which may occur during the permitted use period or as a result of such use.
- (7) The permittee shall furnish BLM with a valid certificate of liability insurance.
- (8) The name of the insured on the liability insurance policy must be the same as the name on the permit. Those permittees holding insurance policies which only insure the permittee and not the permittee's employees must ensure that their employees also have the required insurance in effect, and that a certificate of insurance is furnished to the authorized officer.
- (9) The insurance need only be valid during periods of actual use.

#### D. Transfers and Ownership

On occasion, existing permittees may wish to sell or otherwise terminate their business and desire that the permit privileges to be transferred to a new owner. This might occur either at the end of the existing permit period or prior to expiration of the existing permit. The basic requirements governing such transfers are described in BLM's Recreation Permit Administration Handbook (H-2930-1). Proposed transfers will also be subject to specific requirements of the Moab Field Office Commercial Recreation Permit Transfer Policy (see Appendix B). Applications for transfer of permit privileges must be submitted in advance and in writing to the BLM office issuing the permit. All such applications are subject to the approval of the authorized officer. Permits held for less than two use seasons shall generally not be eligible for transfer.

#### E. Marking of Outfitter Equipment

Every street-legal motor vehicle used to transport clients or equipment shall be marked with at least one sign, decal, or placard on each side of the vehicle. The sign shall at a minimum include the company name and the city and state where the permittee is headquartered. Information must be readable from a distance of 50 feet. Each boat used must be clearly marked with outfitter name and/or logo. Written notice of intent to use vehicles and boats with outfitter markings (company names, logos, etc.) other than those of the permit holder (or another outfitter permitted on the river segment) must be made to the BLM office administering the river segment at least one (1) day prior to the scheduled launch date. If the markings are those of an outfitter not permitted on the river segment, the markings of equipment used on the river must not be visible while on the river. The use of unmarked rental vehicles, boats, and life jackets, or such equipment clearly marked as a rental, is not restricted by this provision.

#### F. Pre-Trip Itinerary

If required, the permittee will file a notice of intent in writing with the BLM prior to each trip. The notice of intent must specify the intended dates of the trip, number of clients, number of guides, name of the lead guide and area to be visited, including the location of camps. See Special Recreation Permit Details on page one for itinerary requirements for this permit.

#### G. Environmental and Resource Protection

All trips must conform to *Leave No Trace* principles.

- (1) The permittee must have a washable, leak-proof, reusable toilet system that allows for the carry-out and disposal of solid human body waste in a responsible and lawful manner. The

system must be adequate for the size of the group and length of the trip. Toilets must be easily accessible for use by passengers and crew at all sites except in developed locations where public restrooms are provided. Leaving solid human body waste on Public Land or dumping it into vault toilets or trash receptacles at BLM facilities is prohibited.

(2) Cans, rubbish, and other trash shall not be discarded, buried, or dumped on public lands or related waters. Wet garbage such as egg shells, orange peels, leftover solid food, bones, melon rinds, etc., must be carried out. Trash cleanup at campsites and day use areas will include all litter or discarded items including small items such as bottle caps and cigarette butts.

(3) Washing or bathing with soap is not permitted in tributary streams, springs or other natural water sources. Dishwater must be strained prior to dispersal. Dishwater and bathwater may not be dumped within 100 feet of streams or springs. Only biodegradable soap may be used. All water-based wastes (urine, strained dishwater, etc.), if not hauled out for disposal, must be deposited into the river.

(4) The permittee will be responsible to ensure that historical, archaeological, cultural, or ecological values are not damaged, destroyed, or removed by any participants on authorized trips. Unless specifically authorized, collection of plants, rocks, fossils, artifacts, shed antlers, animals or parts of animals is prohibited. Permits for such collecting are issued separately outside of this Special Recreation Permit.

(5) The permittee must conduct operations authorized by the permit in accordance with applicable BLM management plans and the permittee's own operating plan submitted to the BLM in support of this permit.

(6) The number of participants on any trip, including guides, may not exceed the number specified in the permittee's operating plan and approved permit. See Supplemental Stipulations for River Outfitters (5) for details.

(7) No camping is permitted within 300 feet of a known prehistoric or historic site.

(8) No camping is permitted within 300 feet of a water source other than perennial streams unless prior authorization is received from the authorizing officer.

#### H. Fires

This permit does not waive any applicable restrictions that may affect the use of camp fires or cooking fires. The following stipulations apply:

(1) At sites accessed by the permittee's motor vehicle(s), the permittee must provide their own fuel wood.

(2) All overnight trips must carry a durable fire pan at least 12 inches wide with at least a 1.5 inch lip around its outer edge and sufficient to contain fire and remains even if stoves are to be used for cooking. Fire blankets under fire pans are recommended to facilitate total ash removal. Charcoal and ash from the fire pan must be hauled out.

(3) Fuel wood gathering is limited to river driftwood only.

(4) Scatter fuel wood piles before leaving the site.

#### I. Safety and Equipment

(1) The permittee shall provide the equipment necessary to serve the public in a safe manner. The permittee will ensure that trips are conducted in compliance with all laws and regulations relating to vehicle operations, land use restrictions, food handling, and any other applicable regulations.

(2) The following equipment must be carried on all commercial trips:

- (a) A first aid kit or kits adequate for the size of the group and type(s) of activities, and sufficient for treating serious injuries.
  - (b) A repair kit or kits with adequate materials to repair the types of equipment used on the trip.
- (3) The following procedures must be followed on all commercial trips:
  - (a) Unless specifically authorized in the permit, discharge of firearms is allowed only for legal pursuit of game animals by a licensed hunter.
  - (b) Use of explosives and fireworks is prohibited.
- (4) Costs for emergency evacuation of the permittee, employees of the permittee, and passengers shall be paid by the permittee or passengers. These costs will not be paid by the BLM.

### **SUPPLEMENTAL STIPULATIONS FOR GUIDING HUNTERS**

- (1) The permittee must ensure the hunt is conducted in full compliance with State of Utah and Federal wildlife laws and regulations and the rules of fair chase.

### **SUPPLEMENTAL STIPULATIONS FOR MOAB FIELD OFFICE RIVER OUTFITTERS**

- (1) Every trip must be in compliance with Utah Parks and Recreation Boating Laws and Rules.
- (2) For inflatable boats, an air pump or pumps adequate to inflate all boats after repairs will be carried on each trip.
- (3) The permit does not authorize the permittee to carry passengers upstream using motorized watercraft and limits downstream travel to low speed, wakeless travel through river areas managed by the Moab Field Office unless such action is necessary as part of an emergency or is expressly authorized on a case-by-case basis.
- (4) Shoreline camping along the banks of the Colorado River is not allowed for a distance of two miles below Cisco Landing. Boaters may not travel under motorized power for a distance of two river miles below Cisco Landing.
- (5) Maximum group sizes by river segment are as follows:

Labyrinth Canyon: 25 persons per trip, including crew.

Cisco to Castle Creek: no limit.

Loma to Westwater Ranger Station, Westwater Ranger Station to Cisco, and Lower Dolores River: 25 passengers plus crew. Crew limitations are as follows:

- (i) up to 1 crew per passenger carrying craft,
- (ii) up to 2 additional crew, (includes individuals who provide specialized client instruction (e.g., archaeologist, geologist, ecologist, outdoor skills, etc.), interpretation, training, safety boaters, or other paid services), who must be involved in providing outfitter services, (Note: Passengers may be paying or non-paying. Musicians, booking agents accompanying tours, leaders of organized groups, guests of the crew, and other similar individuals not providing outfitting services are passengers.)
- (iii) additional crew, above those allowed under number (i) and (ii) above, on non-training trips can only be added by reducing the number of passengers below 25 on a one crew per passenger basis, and

(iv) permittees may request additional crew for training purposes for trips with fewer than 25 passengers; employees being trained will not be counted toward passenger day ceilings.

(6) A passenger day (PD) is one commercial passenger, paying or non-paying, on the river for one calendar day, or a portion thereof. A passenger day is synonymous with a user day. Crew members are not included in passenger day computations.

(7) Use authorization for the Cisco to Castle Creek segment of the Colorado River will be subject to cancellation if yearly use for two consecutive years does not meet 100 passenger days (this stipulation does not apply to outfitters who have voluntarily limited use to 100 passenger days).

After the first year of not meeting the minimum use requirement on a river segment, the permittee will be placed on notice that permit privileges for that segment are subject to cancellation if minimum use is not made the following year. In the case of new permittees (e.g., new permits awarded by BLM and permit transfers) the minimum use requirement will not be applied until the beginning of the third season of use by the permittee. The provisions of the minimum use stipulation shall not apply to situations where allocations are not used as a result of river closure, exceptionally dangerous river conditions, lack of adequate water flow, or other conditions, natural or governmental, existing beyond the permittee's control.

## **SUPPLEMENTAL STIPULATIONS FOR WESTWATER CANYON OUTFITTERS**

(1) Prior reservations are required for all launches, including training trips.

(2) For a pure training trip, room must be reserved on the launch calendar for all participants (e.g., 5 trainers and 10 trainees necessitates a launch size of 15). For combination training/passenger trips, spots must be reserved for trainees and passengers (e.g., 12 passengers, 3 guides, and 8 trainees necessitate a launch size of 20).

(3) The *Notification of Proposed River Trip and Affidavit of Use* shall be filed with the BLM launch representative for all trips in Westwater Canyon. If a BLM representative is not present, the completed affidavit must be left in the appropriate location at the Westwater Ranger Station check-in station. The affidavit will serve as the official record of river trips. Outfitters that conduct trips that deviate from the information submitted on an affidavit must submit changes to the Moab Field Office within 15 days of completing the trip.

(4) A launch date for Westwater Canyon trips authorizes the permittee to launch one group with a maximum number of 25 passengers who must launch, travel, and camp together as a group. No separate groups may camp or stop together (e.g., for lunch) if the result would be a larger number than that allowed to launch as a single group. Split launches and other deviations from this requirement must be authorized in advance through the Moab Field Office. The permittee will follow the established launch calendar with the following exceptions:

(a) Launch dates may be exchanged with other permitted outfitters on the same river segments with their concurrence. The permittee must notify the Moab Field Office of any exchange in writing (fax or email) at least one working day prior to the launch date.

(b) Permittees desiring additional launch dates must make a request for additional dates to the Moab Field Office. Additional launch dates will be granted on an as-available basis. Changes to the following year's launch calendar can first be made on August 1 of each year.

(5) The Moab Field Office must receive notification from the permittee of launch dates that are not going to be used 15 days in advance of the launch date. Permittees may call as late as 15 days prior to the launch date to request that BLM hold a launch they are trying to fill. Permittees canceling a launch, after having received approval to hold it, must notify BLM no later than 7:30 a.m. the day

of the launch. For launches occurring outside of Moab Field Office business hours (e.g., weekends, holidays), the permittee must notify BLM no later than 4:00 p.m. on the first business day prior to the launch date. Outfitters not making both these notifications must pay a \$75 administrative fee for each launch not utilized. BLM will mail a form letter shortly after each non-cancellation occurrence notifying permittees that an administrative fee will be assessed for failure to follow the cancellation procedures. Administrative fees will be added to the year-end billing statement as an additional charge. Failure to cancel a launch reservation is not considered a performance item and will not be considered in permittee evaluations.

(6) Launches must be made from the Westwater Ranger Station and not from any point downstream.

(7) Launching of water craft for upstream motorized travel from Westwater Ranger Station and Cisco Landing is not authorized between February 1<sup>st</sup> and October 15<sup>th</sup>.

(8) Within Westwater Canyon, groups may camp only one night in the canyon proper between the gate of the canyon at mile 124.5 and Cottonwood Wash at mile 112.5. This camping night must be on your launch date. Parties who plan to camp within Westwater Canyon are required to reserve a designated campsite with the Ranger at the time of launching. Campsites are assigned in the order of launching with consideration given to group size. You must stay at the campsite assigned to you.

(9) Fire pans must be carried on all overnight trips and all trips (except single-day trips April 1 through October 31) even if stoves are to be used for cooking.

(10) Dogs must be kept under control at all times. All dog waste must be carried out of the canyon.

(11) Crew members are not included in passenger day computations. Trips by the permittee for the purpose of training employees will not count against the passenger day allocation. Any passengers who are not crew members will count against the allocation if the trip is conducted during the allocated season. The allocated season for Westwater Canyon is **May 1 through September 30.**

(12) The special area fee for use in Westwater Canyon is in addition to the 3% commercial use fee. The special area fee should not be counted as part of regular customer receipts when calculating the 3% commercial use fee. Special area fees may be shown as a separate fee on customer billings. The BLM will include the per person special area fees on the post-season billings. The Westwater special area fee (as of April, 2007) is \$7 per person. **Fees must be paid to the government regardless of whether trips take place within or outside of allocated seasons.** The special area fee is not charged for crew. Adjustments to the special area fee amount are made by the Utah Recreation Resource Advisory Council (RAC) as required by the Federal Lands Recreation Enhancement Act (REA).

(13) The permittee may donate passenger days from its permit allocation to a user day pool system administered by the Moab Field Office on an annual basis. A donation to the pool system will constitute notification of intent not to use allocation, in sufficient time to allow re-allocation to others. The permittee will not be charged for passenger days donated to the pool system provided actual use does not exceed the permittee's available allocation after donation to the pool. The permittee will be charged for passenger days withheld from the pool and not used. The charge for unused days will be based upon the permittee's average passenger day fee (total use fee divided by # passenger days used). The permittee may request passenger days from the pool to facilitate additional use under the permit. On receipt of the permittee's request for additional passenger days, the BLM may temporarily assign additional allocation to the permittee for one season depending on the availability of allocation. Billing will be based upon the revised allocation. If actual use exceeds the after-pool allocation, billing will be based on actual use and the permittee may be subject to disciplinary action.

(14) Passenger day and launch date allocations may be reduced or increased by the following process:

(a) Continuing with the 2007 season, an average commercial passenger day use figure will be determined based on the total passenger day use of all of all outfitters on Westwater Canyon, over each successive five year period. When computing the average use, BLM will not count passenger day use made by outfitters in excess of 150% of their allocation. This commercial use average will be converted to a percentage of all allocated commercial passenger days (defined as 7,250 passenger days in total, which includes the 230 passenger days available to outfitters in round one of the annual allocation pool).

(b) The permittee's actual use (including pre- and post-season use) will be expressed as a percentage of its permitted passenger day allocation for the previous five years after deleting its lowest year of passenger day use.

(c) The substantial use threshold is defined as use no less than 20 percentage points below the total five year commercial average use percentage.

(d) If a permittee's actual use percentage is less than the substantial use threshold, the permit allocation will be reduced by a number of passenger days and/or launches derived from the percentage points between actual use and the substantial use threshold. Passenger day changes will be rounded to the nearest 10 passenger days.

(e) If the permittee's allocation is reduced based on a given five year period, the use during those five years will not be used again to evaluate the compliance with, or adjust the allocation under Supplemental Stipulation for Westwater Canyon Outfitters (14).

(f) If the permittee's actual use is greater than its passenger day allocation for the previous five years on any river segment, BLM may increase the permittee's allocation based on actual use depending on available allocation.

(g) Permittees utilizing 80% or more of authorized use shall not be subject to re-allocation under this section if they participate annually in the appropriate pool system during the term of the permit. Note: contributions to the pool system will be counted as unused passenger days under this stipulation.

In the case of new permittees (e.g., new permits awarded by BLM and permit transfers), the substantial use requirement will not be applied until the beginning of the next five-year substantial use cycle.

(15) Use authorization for Westwater Canyon will be subject to cancellation if yearly use (including pre- and post-season use) for two consecutive years does not meet 50 passenger days. See Supplemental Stipulation for Moab Field Office River Outfitters (7) for details regarding minimum use. Note: contributions to the pool system will be counted as unused passenger days under this stipulation.